

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL LEAGUE :  
PLAYERS' CONCUSSION INJURY : No. 2:12-md-02323-AB  
LITIGATION :  
\_\_\_\_\_ : MDL No. 2323

THIS DOCUMENT RELATES TO: :  
\_\_\_\_\_ : **Hon. Anita B. Brody**

ALL ACTIONS :  
\_\_\_\_\_ :

**REPORT OF THE SPECIAL MASTERS**

1. Wendell E. Pritchett and Jo-Ann M. Verrier, as Special Masters appointed by the Court on July 13, 2016 (ECF 6871), and David Hoffman, appointed by the Court on March 5, 2020 (ECF 11022), pursuant to Article X of the Class Action Settlement Agreement (Settlement Agreement) in this matter, submit this Report to the Court alongside Status Reports from the Claims Administrator, Brown Greer LLC (“Claims Administrator”), and the Baseline Assessment Program Administrator, Epiq Mass Tort (“BAP Administrator”; formerly known as Garretson Resolution Group), to provide an update on the Agreement’s effectuation and progress.
2. The Special Masters have reviewed the 3rd Quarter 2021 Status Reports submitted by both Administrators. These accurately and thoroughly reflect the work of both firms.
3. The Special Masters continue to augment their weekly reports to the Court by highlighting work detailed in these Status Reports and conducting work that is beyond the purview of the Claims and BAP Administrators.

### **Overall Administration**

4. The Special Masters continue to participate in bi-weekly calls with the Claims Administrator and the BAP Administrator. Additionally, both Administrators make themselves available for additional discussions and communications with the Special Masters as necessary to support the fair and efficient administration of the Settlement Agreement.
5. The Special Masters remain constantly informed about the progress of all Claims through the Claims Administrator's robust systems, including its published reports as found on the NFL Concussion Settlement website.
6. Each month, after review with the Claims Administrator, the Special Masters approve the monthly disbursement report to the Trustee authorizing payments of Monetary Awards to Settlement Class Members (SCMs) as well as to relevant attorneys, lienholders, and third-party funders where appropriate.
7. The Special Masters are informed about the BAP Administrator's management of requests for and scheduling of Baseline Assessment Program examinations and the BAP Administrator's ongoing work to ensure that trained BAP authorized neuropsychologists and neurologists complete their work effectively. The BAP Administrator also oversees the Supplemental Benefits program for Players within the Settlement Agreement and manages the lien resolution process on behalf of Retired Players.
8. The Special Masters ensure that the work of the Administrators is communicated to the Court via a regular meeting and report as well as through other communication; we seek to ensure the Court has an opportunity for input into matters arising in the efficient and fair administration of the Settlement Agreement.

**Matters Related to Race-Based Adjustments to Neuropsychological Test Scores**

9. In March 2021, the District Court ordered the dismissal of *Henry et al. v. Nat'l Football League et al.*, 2:20-cv-04165 (E.D. Pa. Aug. 25, 2020), a putative class action alleging racial discrimination in the implementation of the Settlement Program. In dismissing the class action complaint, the Court noted its “concerns about the race-norming issue,” and ordered the NFL Parties and Class Counsel to mediation to address the concerns. On April 28, 2021, the District Court granted in part a motion to intervene into that mediation by counsel for the putative class action plaintiffs.
10. The mediation, under the supervision of Magistrate Judge David Strawbridge, recently concluded with the filing, on October 20, 2021, of a proposed agreement.
11. The Special Masters have closely monitored this issue and advised the District Court and the Magistrate Judge about the relationship between current claims processes and the Parties’ proposals.
12. Starting in August of this year, at the request of Magistrate Judge Strawbridge and with the permission of the Parties and the Intervenors, Special Master Hoffman participated directly and actively in the mediation process to help the Parties reach an agreement. Special Master Hoffman collaborated with Magistrate Strawbridge to keep the Court and the other Special Masters apprised of this mediation activity.
13. If and when the Court approves the Parties’ proposed resolution of these matters, the Special Masters will oversee its administration. The Special Masters are currently working with the Claims Administrator and the BAP Administrator to prepare for that possibility.

**Baseline Assessment Program Milestones**

14. Due to the COVID-19 Pandemic, the BAP Administrator has continued to experience unusually heavy appointment cancellations, with 195 appointments cancelled by Qualified BAP Providers and 151 appointments cancelled by Retired NFL Football Players during the 3rd Quarter of 2021. The BAP Administrator has worked diligently to mitigate the disruptions caused by the pandemic, including working to reschedule appointments and removing negative consequences for cancellations caused by COVID-19.
15. The BAP Administrator has received requests for appointments from 58.1% of Players eligible to receive a BAP examination and has offered one or more appointments to 99.8% of those Players.
16. The BAP Administrator oversees a Supplemental Benefit program for Players diagnosed with Level 1 Neurocognitive Impairment under the Settlement Agreement. As of October 11, 2021, 226 Players had been notified of their eligibility to participate in the program, and 185 had completed orientation. As part of this program, the BAP Administrator is currently piloting a cognitive rehabilitation therapy service in response to requests from participating Players.
17. The Special Masters are working closely with the BAP Administrator to identify and contact medical professionals who are slow to complete the reports necessary for processing Players' BAP exams. To date, the Special Masters have personally contacted two providers to explain the harm caused by their delays in completing the important work of the Settlement. We will continue to work with Epiq to ensure that doctors

understand the ongoing need to complete their work with the Program as efficiently and quickly as possible.

18. As of October 11, 2021, 5,985 Players have had full BAP examinations completed, resulting in 131 Level 2 diagnoses, 200 Level 1.5 diagnoses, 238 Level 1 diagnoses (entitling these Players to Supplemental Benefits under the Settlement Agreement), and 5,216 cases with no diagnosis.

#### **Claims Administrator Milestones**

19. As of October 11, 2021, the Claims Administrator issued 1,326 Notices of Monetary Award, totaling \$922,570,383. The Program has paid 1,269 of these claims, for a total payment to date to Settlement Class Members of \$819,132,546.

#### **Audits**

20. Under the terms of Section 10.3 of the Settlement Agreement, the Special Masters review determinations of the Claims Administrator concerning misrepresentation, omission, or concealment of a material fact in connection with a Monetary Award Claim.

21. The Claims Administrator continues its careful and detailed recommendations of Audits to the Special Masters, detailed on pages 17-19 of its most recent quarterly report. The Special Masters are carefully following the work of the Claims Administrator on investigations.

#### **Appeals**

22. Alongside the Special Masters' authority to hear appeals of Registration determinations under the terms of Section 10.1(b)(i)(3) of the Settlement Agreement, the Court has directed the Special Masters to hear appeals of the Claims Administrator's decisions on Claims pursuant to the Rules Governing Appeals of Claim Determinations.

23. This quarter, the Special Master issued dispositions on five appeals, two of which were by opinion. Of the two by opinion, two have been published online to the Settlement Portal. To date, the Special Masters have published a total of 38 decisions on Monetary Award appeals.

**Education Fund**

24. Pursuant to Article XII of the Settlement Agreement, an Education Fund was established to fund programs promoting safety and injury prevention with respect to football players, including safety initiatives in youth football, educational initiatives for Retired NFL Football Players regarding the NFL CBA Medical and Disability Benefits, and other educational initiatives benefitting Retired NFL Football Players.

25. The three educational programs established pursuant to Article XII of the Settlement Agreement are operational, following the Court's March 23, 2020 Order accepting the Parties' proposals for these Programs.

26. We expect to see educational communication with Players about on-going benefits from the NFL during this quarter.

27. The approved program in youth sports safety with the Korey Stringer Institute (KSI) is operational, with four school districts identified as eligible to receive funding as part of the first innovATe cohort (Boston Public Schools, Cincinnati Public Schools, Oakland Athletic League; and Stewart and Early Counties in Georgia, altogether representing eighteen individual schools with approximately 15,000 students). Three of the four school districts have now signed a formal agreement with KSI, and the remaining school district is expected to sign its agreement shortly. In addition, two of the school districts have already hired an athletic trainer, while the other two have identified athletic trainers

who they would like to hire. KSI, working with the NFL Alumni Association, has identified at least one retired player in each of the four school communities to serve as an NFL “ambassador.” Finally, KSI is in the process of identifying school districts for the second innovATE cohort. KSI is currently reviewing initial applications from seventeen school districts from nine different states. The final applications for qualified school districts are due February 15, 2022, and KSI expects to select four school districts for the second cohort by the end of March 2022.

28. Finally, a research program that allows access to data that Players have voluntarily contributed via the BAP Program is underway. The experts running this program at Columbia University have initiated the data extraction process from the BAP records, with appropriate safeguards in place for reliability and security of the data. The wealth of data provided has resulted in a somewhat slower time frame than originally anticipated. The Special Masters will work with Class Counsel and others in the final quarter to ensure that this project is supporting broader Settlement Agreement efforts and is making adequate progress toward the goal of having this data available to the research community.

Respectfully submitted,



Wendell E. Pritchett  
Special Master



Jo-Ann M. Verrier  
Special Master



David A. Hoffman  
Special Master